



CITY OF LODI

COUNCIL COMMUNICATION

AGENDA TITLE Arbitrage Rebate Services Contract

MEETING DATE February 19, 1992

PREPARED BY: Finance Director

RECOMMENDED ACTION The City Council authorize the City Manager to execute an agreement with the firm of Jones, Hall, Hill & White to calculate the City's arbitrage liability and prepare arbitrage reports for the Certificates of Participation re-financed December 18, 1991.

BACKGROUND INFORMATION On August 7, 1991, the City Council authorized the City Manager to execute an agreement with the firm of Jones, Hall, Hill & White to calculate the City's arbitrage liability and to prepare arbitrage reports required by the Internal Revenue Service for the Certificates of Participation issued by the City to finance construction at the White Slough Water Pollution Control Facility. On December 18, 1991, the City refinanced these Certificates of Participation to obtain better interest rates. Accordingly, a new agreement is required to continue the rebate calculation services provided by Jones, Hall, Hill & White.

As discussed in the Council Communication dated August 7, 1991, arbitrage earnings are the interest earnings from the investment of bond proceeds at interest rates greater than the rates paid to bond holders. In short, the City is prohibited from making a profit by investing bond proceeds. Under the 1986 Tax Reform Act, excess earnings (profit) must be reported to the Internal Revenue Service yearly and then paid to the Internal Revenue Service at the end of five years from the date the bonds were issued. The 1986 Tax Reform Act requires that bond proceeds be expended in full by the end of the fifth year from when they were received. Failure to comply with the 1986 Tax Reform Act could result in withdrawal of the 'tax exempt' status of these Certificates of Participation and would result in the interest earnings paid to bond holders becoming 'taxable earning' versus 'non-taxable earning' which they now are. This would also adversely affect the future credibility of the City in the bond market when seeking financing.

Because of the importance of the arbitrage calculation to bondholders and to the City, it is recommended that the City continue to contract with a firm that specializes in preparing these calculations and reports.

Jones, Hall, Hill & White was recommended and approved by Council on August 7, 1991 to be the firm to prepare the rebate calculations and official reports based on their prior experience and reputation. Jones, Hall, Hill & White was selected by the City after review of four proposals for this service.

APPROVED: _____

THOMAS A. PETERSON
City Manager



Considering that only six months have passed since the contract was first awarded to Jones, Hall, Hill & White, it is the staff's recommendation that the City continue to contract for these services with this firm.

The cost to the City for Fiscal Year 1991-92 will be \$4,000, \$2,000 for each year for each of the next four years and \$500 per year for the bond reserve fund.

FUNDING: Sewer Fund

Respectfully, 


H.D. Flynn
Finance Director

Attachments
Resolution
Agreement with Jones, Hall, Hill and White

JONES HALL HILL & WHITE,

A PROFESSIONAL LAW CORPORATION
ATTORNEYS AT LAW

RECEIVED

JAN 10 1992

San Francisco, CA

CHARLES F. ADAMS
STEPHEN R. CASALEGGIO
THOMAS A. DOWNEY
ANDREW C. HALL, JR.
KENNETH I. JONES
WILLIAM H. MADISON
R. WADE NORRIS*
DAVID J. OSTER
BRIAN D. QUINT
PAUL J. THIMMIO
SHARON STANTON WHITE

FOUR EMBARCADERO CENTER
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SAN FRANCISCO, CA 94111
(415) 391-5780

FACSIMILE
(415) 391-5784
(415) 391-5785
(415) 956-6308

January 8, 1992

* ADMITTED TO OREGON BAR ONLY

ROBERT J. HILL (1922-1988)

Mr. Dixon Flynn
Finance Director
CITY OF LODI
221 West Pine Street
Lodi, CA 95241

RE: \$11,170,000 City of Lodi, California, Certificates of Participation
(1991 Wastewater Treatment Plant Expansion Refunding Project)

Dear Mr. Flynn:

Pursuant to Sharon White's conversation today with Diana White regarding the above mentioned, enclosed are two copies of the Agreement for Rebate Calculation Services.

If everything is to your approval, please have both copies signed by an authorized representative of the City and send one signed copy back to me.

Very truly yours,

Dorinda A. Mercado

Dorinda A. Mercado

Enclosures

cc: Sharon Stanton White
Gerald Craig Hill

JONES HALL HILL & WHITE.

A PROFESSIONAL LAW CORPORATION

ATTORNEYS AT LAW

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ROBERT J. HILL (1922-1988)

AFTER EXECUTION PLEASE RETURN TO:

Jones Hall Hill & White.
A Professional Law Corporation
Four Embarcadero Center, 19th Floor
San Francisco, CA 94111
Attention: Ms. Dorinda Mercado

AGREEMENT FOR REBATE CALCULATION SERVICES

MIS AGREEMENT, is made and entered into this ____ day of _____, 1992, by and between the City of **Lodi**, California (herein called "City") and JONES HALL, HILL & WHITE, A PROFESSIONAL LAW CORPORATION, San Francisco, California (herein called "Attorneys");

WITNESSETH:

WHEREAS, on December 18, 1991 the City issued its \$11,170,000 Installment Sale Agreement, dated as of December 1, 1991 (the "Agreement") and caused the delivery of certificates of participation (the "Certificates") representing installment payments under the Agreement (the "Installment Payments");

WHEREAS, in order to assure that the interest component of Installment Payments and interest payable with respect to the Certificates is excludable from gross income pursuant to Section 103 of the Internal Revenue Code of 1986 (the "Code"), it is necessary that the City assure compliance with Section 148(f) of the Code relating to rebate of certain excess investment earnings to the United States; and

WHEREAS, the City has determined that Attorneys are qualified by training and experience to perform the services required, and Attorneys are willing to provide such services;

NOW, THEREFORE, the City employs Attorneys, and Attorneys accept such employment, upon the following terms and conditions:

ARTICLE I

DUTIES OF ATTORNEYS

Attorneys shall perform and render the following services to the extent necessary to provide for compliance with Section 148(f) of the Code in connection with the Agreement and the Certificates:

A. Perform rebate calculations required by Section 148(f) of the Code and applicable regulations.

B. Provide instructions to the City concerning compliance with Section 148(f) of the Code and applicable regulations.

C. Consult and cooperate with the City and its agents and employees, as necessary to provide for compliance by the City with the requirements of Section 148(f) of the Code for the Agreement and the Certificates.

D. Upon the request of the City following any rebate calculation, and assuming compliance with rebate instructions provided by Attorneys, provide a legal opinion stating that the exclusion from gross income of interest on the Certificates for federal income tax purposes has not been adversely affected by reason of failure to comply with Section 148(f) of the Code.

E. Upon the request of the City following any rebate calculation, provide advice to assist in most effectively reducing or satisfying potential rebate liability, if any.

ARTICLE II

COMPENSATION AND COSTS

For the services of Attorneys set forth in Article I, the City shall pay Attorneys a service fee of \$4,000.00 for the first bond year and a service fee of \$2,000.00 per bond year thereafter until depletion of the Improvement Account. Upon termination of the Improvement Fund, there will be a service fee of \$500.00 per bond year for the Reserve Fund. All fees will be payable following performance of duties required of Attorneys for the bond year in question.

In addition to the compensation set forth in the preceding paragraph, the City shall reimburse Attorneys for direct out-of-pocket expenses for Federal Express or other courier, messenger, delivery or special mail services, telecopying services, photocopying, binding and (upon request by the City for the same) expenses for travel outside of the State of California in connection with the services rendered by Attorneys hereunder.

ARTICLE III

RESPONSIBILITIES OF CITY

The City shall cooperate with Attorneys in the **performance** of their services under Article I, and shall provide Attorneys with information requested by Attorneys regarding investments made by the City with proceeds of the Certificates and amounts to be used for payment of the Installment Payments and the Certificates or shall assist Attorneys in obtaining such information.

In the event of prepayment of Installment Payments and redemption of the Certificates in whole or in part prior to their maturity, the City shall notify Attorneys of said redemption at least thirty (30) days prior to such redemption.

In the event of an advance or current refunding of the Installment Payments and the Certificates in whole or in part prior to their maturity, the City shall notify Attorneys of said refunding at least thirty (30) days prior to such refunding.

ARTICLE IV

TERM OF AGREEMENT

This Agreement shall terminate on the first day of the third full calendar month following the end of the fifth bond year pertaining to the Agreement and the Certificates unless earlier renewed by supplemental agreement between the parties hereto, or unless the City shall, upon ten (10) days written notice to Attorneys, terminate this Agreement for failure of Attorneys to perform the duties set forth in Article I hereof in a manner satisfactory to the City.

IN WITNESS WHEREOF, the City and Attorneys have caused this Agreement to be executed, in duplicate, in their respective corporate names, by one of their respective duly authorized officers, all as of the day and year first above written.

CITY OF LODI, CALIFORNIA

Title:

JONES HALL HILL & WHITE,
A Professional Law Corporation

By Sharon Stanton White
Sharon Stanton White

RESOLUTION NO. 92-34

**A RESOLUTION OF THE LODI CITY COUNCIL
AUTHORIZING THE CITY'S ENTERING INTO AN AGREEMENT FOR ARBITRAGE
REBATE SERVICE REBATE CALCULATION SERVICES)**

WHEREAS, Lodi Municipal Code, Section 3.20.070, authorizes dispensing with bidding procedures for purchases of supplies, services, or equipment when the City Council determines that the purchase or method of purchase would be in the best interest of the City; and

WHEREAS, on August 7, 1991, the City entered into an agreement with Jones, Hall, Hill and White to provide the City with Arbitrage Rebate Calculation Services for the Certificates of Participation issued for the construction at the White Slough Water Pollution Control Facility; and

WHEREAS, in 1988, the City issued Certificates of Participation to finance construction of the White Slough Water Pollution Control Facility expansion; and

WHEREAS, on December 18, 1991, the City refinanced the above Certificates of Participation to obtain better interest rates; and

WHEREAS, prior to awarding a contract to Jones, Hall, Hill and White to provide "arbitrage rebate services", the City solicited proposals from four firms that provide these services and determined that the contract should be awarded to Jones, Hall, Hill and White based on the firm's expertise, reputation as bond counsel, and the City's past relationship with this firm; and

WHEREAS, it is the City Manager's recommendation that the City enter into an agreement for said services with the firm of Jones, Hall, Hill and White.

NOT THEREFORE, BE IT RESOLVED that the Lodi City Council hereby approves the City's entering into an agreement for the above described Rebate Calculations services with Jones, Hall, Hill and White in the amount of \$4,000 for Fiscal year 1991-92, \$2,000 for Fiscal Years 1992 through 1996 and \$500 for each bond year for the reserve fund, and further authorizes execution of said Agreement by the City Manager.

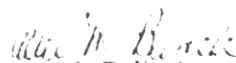
Dated: February 19, 1992

I hereby certify that Resolution No. 92-34 was passed and adopted by the City Council of the City of Lodi in a regular meeting held February 19, 1992 by the following vote:

Ayes: Council Members - Hinchman, Pennino, Sieglock and Pinkerton (Mayor)

Noes: Council Members - None

Absent: Council Members - Snider


Alice M. Reinche
City Clerk

CITY COUNCIL

JAMES W. PINKERTON, Mayor

PHILLIP A. PENNINO

Mayor Pro Tempore

W I D M. HINCHMAN

JACK A. SIEGLOCK

JOHN R. (Randy) SNIDER

CITY OF LODI

CITY HALL, 221 WEST PINE STREET

P.O. BOX 3006

LODI, CALIFORNIA 95241-1910

(209) 334-5634

FAX (209) 333-6795

THOMAS A. PETERSON
City Manager

ALICE M. REIMCHE
City Clerk

LOB McNATT
City Attorney

February 24, 1992

Jones Hall Hill 8 White
A Professional Law Corporation
Attention: Oorinda Mercado
Four Embarcadero Center, 19th Floor
San Francisco, CA 94111

Re: Agreement for Rebate
Calculation Services

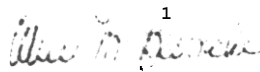
Dear Ms. Mercado:

Enclosed herewith please find fully executed copy of agreement for Rebate Calculation Services between the City of Lodi and Jones Hall Hill 6 White which was approved by the Lodi City Council at its meeting of February 19, 1992.

Also enclosed please find certified copy of Resolution No. 92-34 entitled. "A Resolution of the Lodi City Council Authorizing the City's Entering into an Agreement for Arbitrage Rebate Service (Rebate Calculation Services)" which was adopted by the Lodi City Council at its February 19, 1992 meeting.

Should you have any questions regarding this matter, please do not hesitate to call.

Very truly yours,

¹

Alice M. Reimche
City Clerk

AMR/jmp

Enclosures

JONES HALL HILL & WHITE,

A PROFESSIONAL LAW CORPORATION
ATTORNEYS AT LAW

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CITY OF LODI, CALIFORNIA

Approved as to form:

By Thomas A. Peterson

Title: City Manager, Thomas A. Peterson

Bobby W. McNatt
City Attorney, Bobby W. McNatt

JONES HALL HILL & WHITE.
A Professional Law Corporation

Attest:

Alice M. Reimche
City Clerk, Alice M. Reimche

By Sharon Stanton White
Sharon Stanton White